

2017 Regular Session

HOUSE BILL NO. 479

BY REPRESENTATIVE HORTON

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CHILDREN/NEWBORNS: Provides relative to prenatal neglect and reporting thereof

1 AN ACT

2 To amend and reenact Children's Code Articles 603(24) and 610(G), relative to prenatal  
3 neglect and the reporting thereof; to provide for the definition of prenatal neglect; to  
4 establish procedures for medical identification of prenatal neglect; to provide relative  
5 to reporting of prenatal neglect by physicians; to provide for limitation of liability;  
6 and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Children's Code Articles 603(24) and 610(G) are hereby amended and  
9 reenacted to read as follows:

10 Art. 603. Definitions

11 \* \* \*

12 (24) "Prenatal neglect" means ~~the unlawful use by a mother during~~  
13 ~~pregnancy of a~~ exposure to chronic or severe use of alcohol or the unlawful use of  
14 any controlled dangerous substance, as defined by R.S. 40:961 et seq., or in a manner  
15 not lawfully prescribed, which results in symptoms of withdrawal in the ~~infant~~  
16 newborn, observable and harmful effects in the physical appearance or functioning  
17 of the newborn, or the presence of a controlled substance or a metabolic thereof in  
18 ~~the infant's body~~ the newborn's body, blood, urine, or meconium that is not the result  
19 of medical treatment, as indicated by the treating physician.

20 \* \* \*

1 Art. 610. Reporting procedure; report to the legislature

2 \* \* \*

3 G.(1) If a physician who is involved in the delivery or care of a newborn has  
4 cause to believe that ~~a mother of an infant unlawfully used during pregnancy~~ the  
5 newborn was exposed in utero to a controlled dangerous substance, as defined by  
6 R.S. 40:961 et seq., in a manner not lawfully prescribed, the physician shall order a  
7 toxicology test upon the ~~infant~~ newborn, without the consent of the ~~infant's~~  
8 newborn's parents or guardian, to determine whether there is evidence of prenatal  
9 neglect. ~~If the test results are positive~~ there is evidence of prenatal neglect, the  
10 physician shall make a report ~~the results,~~ as soon as possible, ~~in accordance~~  
11 consistent with this Article. ~~If the test results are negative~~ there is no evidence of  
12 prenatal neglect, all identifying information shall be obliterated if the record is  
13 retained, unless the parent approves the inclusion of identifying information. Positive  
14 test results shall not be admissible in a criminal prosecution.

15 (2) If there are symptoms of withdrawal in the newborn or other observable  
16 and harmful effects in his physical appearance or functioning, the physician shall  
17 make a report consistent with this Article if he has cause to believe such condition  
18 is due either to the chronic or severe use of alcohol by the mother during pregnancy,  
19 or to the effects of fetal alcohol spectrum disorder.

20 (3)(a) If there are symptoms of withdrawal in the newborn or other  
21 observable and harmful effects in his physical appearance or functioning that the  
22 physician believes is due to the use of a controlled dangerous substance, as defined  
23 by R.S. 40:961 et seq., in a lawfully prescribed manner by the mother during  
24 pregnancy, the physician shall make a notification to the department. Such  
25 notification shall include an assurance that a plan of safe care has been or will be  
26 developed prior to discharge from the hospital to ensure the safety of the newborn  
27 and caretaker. The plan of safe care shall, at a minimum, address the health and  
28 substance use disorder treatment needs of the newborn and the affected family or  
29 caretaker.

1           (b) The department shall promulgate rules and regulations in accordance  
2           with the Administrative Procedure Act to implement the provisions of this  
3           Paragraph. Such rules shall include, at a minimum, the manner in which the  
4           notification required by this Paragraph shall be made to the department.

5           (4) No cause of action shall exist against an individual who in good faith  
6           develops a plan of safe care or a plan to monitor such plan. Such individual shall  
7           have immunity from any civil or criminal liability that otherwise might be incurred  
8           or imposed.

9           Section 2. This Act shall become effective upon signature by the governor or, if not  
10 signed by the governor, upon expiration of the time for bills to become law without signature  
11 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
12 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
13 effective on the day following such approval.

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#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 479 Original

2017 Regular Session

Horton

**Abstract:** Revises the definition of "prenatal neglect" and requirements for reporting thereof.

Present law relative to reporting of child abuse (Ch. C. Art. 601 et seq.) defines "prenatal neglect" to mean the unlawful use by a mother during pregnancy of a controlled dangerous substance, as defined by present law, which results in symptoms of withdrawal in the infant or the presence of a controlled substance in the infant's body.

Proposed law revises the definition of "prenatal neglect" to mean exposure to chronic or severe use of alcohol or the unlawful use of any controlled dangerous substance, as defined by present law, or in a manner not lawfully prescribed, which results in symptoms of withdrawal in the newborn, observable and harmful effects in the physical appearance or functioning of the newborn, or the presence of a controlled substance or a metabolic thereof in the newborn's body, blood, urine, or meconium that is not the result of medical treatment, as indicated by the treating physician.

Present law provides requirements relative to medical identification of prenatal neglect and reporting thereof by physicians.

Proposed law revises present law to establish the following procedure for medical identification and reporting by physicians of prenatal neglect:

- (1) If a physician who is involved in the delivery or care of a newborn has cause to believe that the newborn was exposed in utero to a controlled dangerous substance, as defined by present law, in a manner not lawfully prescribed, the physician shall order a toxicology test upon the newborn, without the consent of the newborn's parents or guardian, to determine whether there is evidence of prenatal neglect.
- (2) If there is evidence of prenatal neglect, the physician shall report the results, as soon as possible, following the applicable procedure provided present law.
- (3) If there is no evidence of prenatal neglect, all identifying information shall be obliterated if the record is retained, unless the parent approves the inclusion of identifying information. Present law and proposed law provide that positive test results shall not be admissible in a criminal prosecution.
- (4) If there are symptoms of withdrawal in the newborn or other observable and harmful effects in his physical appearance or functioning, the physician shall make a report consistent with the applicable procedure provided present law if he has cause to believe such condition is due either to the chronic or severe use of alcohol by the mother during pregnancy, or to the effects of fetal alcohol spectrum disorder.
- (5) If there are symptoms of withdrawal in the newborn or other observable and harmful effects in his physical appearance or functioning that the physician believes is due to the use of a controlled dangerous substance, as defined by present law, in a lawfully prescribed manner by the mother during pregnancy, the physician shall make a notification to the Dept. of Children and Family Services. Such notification shall include an assurance that a plan of safe care has been or will be developed prior to discharge from the hospital to ensure the safety of the newborn and caretaker. The plan of safe care shall, at a minimum, address the health and substance use disorder treatment needs of the newborn and the affected family or caretaker.

Proposed law stipulates that no cause of action shall exist against an individual who in good faith develops a plan of safe care or a plan to monitor such plan. Provides that such individual shall have immunity from any civil or criminal liability that otherwise might be incurred or imposed.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends Ch. C. Arts. 603(24) and 610(G))